

## FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2015-005  
Date of Issue: February 10, 2016

### The Question

I have a question regarding my ethical obligation under rule 10.420(c), Rules for Certified and Court-Appointed Mediators. The rule reads, “The mediator shall cause the terms of any agreement reached to be **memorialized appropriately** [emphasis added] and discuss with the parties and counsel the process for formalization and implementation of the agreement.”

For example, in a recent mediation, the parties reached full agreement. Plaintiff attorney offered to draft the agreement and send it to all parties for review and execution. All parties verbally agree.

Does the verbal discussion in the example above satisfy Rule 10.420(c)? Do the words “*memorializing the agreement*” equate to requiring the mediator to put something in writing as to the terms of the agreement, i.e., a memorandum of the understanding, prior to the close of the mediation session?

Submitted by a Florida Supreme Court Certified County Mediator  
Northern Division

### Authorities Referenced

Rule 10.420(c) and the Committee Note, Florida Rules for Certified and Court-Appointed Mediators  
Rule 1.730(b), Florida Rules of Civil Procedure  
Rule 8.290(o), Florida Rules of Juvenile Procedure  
Rule 12.740(f), Florida Family Law Rules of Procedure  
Rule 9.740(b), Florida Rules of Appellate Procedure  
MEAC Opinion 2004-004

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Supreme Court of Florida  
Dispute Resolution Center

### Summary

The verbal discussion in the scenario presented satisfies the requirements of rule 10.420(c), Florida Rules for Certified and Court-Appointed Mediators. The rule does not require the mediator to write something regarding the terms of the agreement prior to the close of the mediation session if the parties have agreed who will memorialize the

agreement and the process for its formalization. The Committee Note to rule 10.420 confirms this by advising that “mediators have an obligation to ensure these rules [Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f)] are complied with, but are not required to write the agreement themselves.” Florida Rule of Appellate Procedure 9.740, Completion of Mediation, (b), Agreement, adopted in 2010, is similar to the other rules of procedure.

### Opinion

The MEAC believes the verbal discussion in the scenario presented satisfies the requirements of rule 10.420(c), Florida Rules for Certified and Court-Appointed Mediators. The rule does not require the mediator to write something regarding the terms of the agreement prior to the close of the mediation session if the parties have agreed who will memorialize the agreement and the process for its formalization. As mentioned in MEAC Opinion 2004-004, the Committee Note to rule 10.420 confirms this by advising that “mediators have an obligation to ensure these rules [Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f)] are complied with, but are not required to write the agreement themselves.” Florida Rule of Appellate Procedure 9.740, Completion of Mediation, (b), Agreement, adopted in 2010, is similar to the other rules of procedure.

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*Signed and Dated by Susan Dubow, MEAC Committee Chair*